Supreme Court, U.S.
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No. 93-1304

In The

Supreme Court of the United States

October Term, 1993

SHARMAN RAE McVAY,

Petitioner,

v.

SAMUEL RAY PARRISH

Respondent

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF OF RESPONDENT SAMUEL RAY PARRISH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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34 pp

QUESTIONS PRESENTED

The questions presented are: (1) whether §522(f) of the Bankruptcy Code allows a debtor to avoid the fixing of a lien on exempt property, inherited by him as his separate property during his marriage, where the lien is granted to the debtor's former spouse in a divorce decree; and (2) whether the former spouse's lien is invalid, in any event, because it does not fit any of the express exceptions to the Texas constitutional prohibition against liens against homesteads.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent Samuel Ray Parrish respectfully requests that the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit be denied.

OPINIONS BELOW

Petitioner's Appendices set forth the relevant opinions of the courts below, with the exception of the parties' Divorce Decree, which is attached hereto as Appendix G.

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STATUTES AND RULES INVOLVED

11 U.S.C. §522(f)(1) states, in pertinent part, as follows:

> "[T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled . . ., if such lien is . . . a judicial lien . . ."

Art. 16, §50 of the Texas Constitution provides, in pertinent part, that:

> "The homestead of a family shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing . . .No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided . . ."

§5.01 (a)(1) of the Texas Family Code provides, in pertinent part, that:

> "A spouse's separate property consists of:
>
> (1) the property owned or claimed by the spouse before marriage;

(2) the property acquired by the spouse during marriage by gift, devise, or descent; . . ."

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STATEMENT OF THE CASE

Petitioner, Sharman Rae McVay ("McVay") was granted a divorce from Respondent, Samuel Ray Parrish ("Parrish") on March 21, 1991. Parrish filed for Chapter 7 bankruptcy relief on May 29, 1991, and thereafter filed the underlying complaint to determine the dischargeability of a judgment lien created in the divorce decree. A copy of the divorce decree was in evidence before the Bankruptcy Judge, and is attached hereto as Appendix "G"

Facts. The parties were married March 6, 1982. Mr. Parrish's mother died on March 6, 1983, and he inherited the real property that is the subject of this litigation. A house was then constructed on Mr. Parrish's inherited land. Texas is a community property state. The divorce decree included a judgment in McVay's favor against Parrish for $76,500.00, representing half of the reimbursement to the community estate for improvements made to Parrish's inherited land. The money judgment in McVay's favor was secured by an equitable lien imposed in the decree against Parrish's land. (Appendix G) The divorce decree confirmed the inherited land to be Parrish's separate property. It made no reference to either party's homestead rights. (Appendix G)

Misstatements in Petitioner's Statement of the Case.

1. Petitioner incorrectly states as fact that McVay's judgment lien was "valid." (p.4 Petition for Writ of Certiorari) Respondent, the Bankruptcy Court and the District Court assert

that it was invalid under the Texas Constitution. (Appendices B 4-9; C 16)

2. Petitioner incorrectly states as fact that Parrish was granted "a new fee simple ownership to the property and improvements" by the divorce decree. (p.5 Petition for Writ of Certiorari) This is a conclusion of law, which is disputed by Respondent, and which is contrary to the written opinions of all of the courts below. (Appendices B, C).

3. Petitioner states as fact that Parrish had the ability to satisfy all his debts when he filed his bankruptcy petition. This is a claim : (i) made here for the first time by Petitioner; (ii) which is an impermissible collateral attack on the Bankruptcy Court's Discharge of Debtor; and (iii) which is irrelevant to Petitioner's claim that the judgment lien attached after Parrish first acquired fee simple ownership of the property; and (iv) which is not supported by the bankruptcy schedules.

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SUMMARY OF THE ARGUMENT

1. The judgment lien was properly avoided, because Parrish acquired his interest in the property before the lien attached.

2. The judgment lien was properly avoided, because it was invalid under the Texas Constitution.

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REASONS FOR DENYING THE WRIT

I. Parrish Possessed His Interest in the Property Prior to the Fixing of McVay's Judicial Lien.

The Fifth Circuit Court of Appeals correctly ruled that the equitable lien imposed in the Texas divorce decree was avoid-

able by the Bankruptcy Court as a judgment lien, because Parrish acquired the 23.15 acre tract from his mother before the divorce decree was entered. The bankruptcy exemption statute, 11 U.S.C. §522(f)(1), entitles a debtor to avoid the fixing of a judicial lien on his exempt property [Texas homestead]. This case is controlled by *Farrey v. Sanderfoot,* ___ U. S. __, 111 S.Ct. 1825, 114 L.Ed. 2d 337 (1991). Congress enacted §522 with the broad purpose of protecting the debtor's exempt property. *id.* at 1829. In the Bankruptcy Reform Act of 1978, Congress revised the law to permit the debtor to avoid the affixing of some liens. §522(f)(1), by its terms, extends this protection to cases involving judicial liens on exempt property. *id.* at 1829. This Court held in *Farrey* that a debtor cannot use §522(f)(1) to avoid a lien on an interest acquired after the lien attached. *id.* at 1830. Therefore, the critical inquiry is whether the debtor ever possessed the interest to which the lien fixed, before it fixed. If he did, §522(f)(1) permits the debtor to avoid the fixing of the lien on that interest. *id.* at 1830.

Whether the debtor possessed an interest to which the lien fixed, before it fixed, is a question of state law in a divorce matter. *id.* at 1830. In the *Farrey* case, the parties were divorced in Wisconsin. Under Wisconsin law the husband and wife held title to the real estate in joint tenancy, each possessing an undivided one-half interest. Their divorce decree extinguished these previous interests and created new interests in place of the old. The debtor obtained fee simple ownership in the real estate, and his spouse received other assets and a money judgment against the debtor, secured by a lien on his new fee simple interest. *id.* at 1830. This Court held that the

lien could not have fixed on Mr. Sanderfoot's preexisting undivided one-half interest, because the divorce decree extinguished it. Instead, the only interest that the lien encumbered was the debtor's wholly new fee simple interest. The same decree that awarded the debtor his fee simple interest simultaneously granted the lien to his spouse. The debtor took the interest and the lien together, as if he had purchased an already encumbered estate from a third party. *id.* at 1830. This Court held that, since the debtor never possessed his new fee simple interest before the lien "fixed", §522(f)(1) was not available to void the lien. *id.* at 1831.

Parrish's situation is distinguishable from that of the debtor in *Farrey*. Parrish acquired his separate property interest during the marriage through inheritance in 1983. As a matter of law, it was his separate property from that point forward. Tex. Fam. C. §5.02 (a)(2); *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977). His spouse acquired no property rights in the inheritance. Under Texas law, once the character of property is determined, as of the time of inception of title, the character is fixed. The character is not affected if at a later time the property is improved by funds of a different character, even though the contributing estate may be entitled to reimbursement from the benefited estate upon the dissolution of the marriage. *Day v. Day*, 610 S.W.2d 195 (Tex. App. - Tyler 1980, n.r.e.). The subsequent use of community funds to enhance separate property merely creates a claim for money in equity, that is not a right, title, or interest in the land. *Burton v. Bell*, 380 S.W.2d 561, 564 (Tex. 1964); *Anderson v. Gilliland*, 624 S.W.2d 243 (Tex. App. - Dallas 1981, n.r.e.).

McVay claims that Parrish's separate property inheritance does not distinguish this case from *Farrey v. Sanderfoot,* because (supposedly) in both, the husband's interest in the property was created by the divorce decree, giving him property rights that he did not already possess. But Mr. Parrish owned the land as his fee simple separate property when it was inherited from his mother. The Texas trial court could not have divested him of his fee title to his separate property as a matter of law. *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977).

> "Trial courts have a broad latitude in the division of the marital community property, but that discretion does not extend to the taking of the fee to the separate property of the one and its donation to the other." *id.* at 142.

McVay also cites *Farrey* for the proposition that the purpose of § 522(f)(1) is thwarted by allowing her former spouse to avoid the lien imposed against his property in the divorce decree. (p.15, Petition for Writ of Certiorari) Unlike *Farrey*, McVay did not have a pre-existing interest in the property that was "fully equal to that of her spouse". *Farrey supra.* at 1831 In *Farrey* the property was akin to Texas community property, owned equally by both marital partners prior to the divorce[1]. But Parrish's land became his separate property as soon as he

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[1] Prior to the divorce judgment, Farrey and her husband held title to the property in joint tenancy, each possessing an undivded one-half interest. *Farrey v. Sanderfoot, supra.* at 1830.

inherited it. Tex. Fam. C. §5.01. McVay, unlike the creditor spouse in *Farrey*, was not being protected for loss of her one-half interest in the property by the divorce decree lien. McVay's lien was imposed for a debt, reimbursement for money spent on improving her husband's separate property. *Burton v. Bell*, 380 S.W.2d 561, 564 (Tex. 1964); *Anderson v. Gilliland*, 624 S.W.2d 243 (Tex. App. - Dallas 1981, n.r.e.). McVay is no different than any other judgment creditor seeking to enforce a lien against property protected by the bankruptcy exemption statute. 11 U.S.C. §522(f)(1); (Appendix B 3).

Texas Homestead and Reimbursement Rights. Petitioner misconstrues the nature of Texas homestead and reimbursement rights, citing the Texas Court of Appeals decision in *Pemelton v. Pemelton*, 809 S.W.2d 642 (Tex. App. - Corpus Christi 1991), *reversed*, 836 S.W.2d 145 (Tex. 1992). Petitioner did not provide this Court with the case's full citation, which would have shown that it was reversed by the Texas Supreme Court. The lower court opinion was criticized on this very point:

> "Finally, the Court of Appeals erred [in *Pemelton v. Pemelton*] in its constitutional analysis of the trial court's judgment by confusing the 'right of reimbursement' with the 'homestead interest.'....The homestead interest is a legal interest created by the [Texas] Constitution that provides prophylactic protection from all but the three types of constitutionally permitted liens against homesteads. This interest, unlike the right of reimbursement,

> gives protective legal security rather than vested economic rights." *Heggen v. Pemelton*, 836 S.W.2d 145, 148 (Tex. 1992) (emphasis added).

The Texas divorce decree did not award to Parrish any interest in the land that he did not already possess. McVay never had an ownership interest in Parrish's separate property. *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137 (Tex. 1977) Since the marriage ended by virtue of the divorce decree, she had no ongoing homestead to protect from forced sale. TEX. CONST. Art. 16, §50

There was no new estate created in Parrish by the divorce decree. In fact, the decree merely "confirmed" his previous separate property ownership of the inherited land. (Appendix G 10) Parrish's homestead right after the divorce was by virtue of his continued use of his inherited land as his home. TEX. CONST. art. 16, §50

Under Texas law the community estate's reimbursement right was not a right, title or interest in property. The Texas Supreme Court held in *Burton v. Bell, supra.* that no matured right of equitable reimbursement for community expenditures on separate property arises until dissolution of the community. It is an equitable right that may be considered at the time of divorce, not an interest in property. *Jones v. Jones*, 804 S.W.2d 623 (Tex. App. - Texarkana 1991, no writ)

Judicial Lien Against Former Community Property is Not Voidable. A federal district court in Texas has applied the *Farrey* decision to a situation where the debtor was attempting to avoid a judicial lien against his homestead created in a di-

vorce decree out of community property. *In re Finch*, 130 B.R. 753 (S.D. Tex. 1991). Although the case is distinguishable, it is still a good example of proper application of the *Farrey v. Sanderfoot* holding to judicial liens created in Texas divorce proceedings. *In re Finch* affirmed the Bankruptcy Court's decision not to avoid a lien created in a divorce decree, because community property was converted into the debtor's fee simple property by the divorce decree. The District Court noted that the lien, awarded to the non-acquiring spouse in the divorce decree, did not attach to the acquiring spouse's previous one-half community interest, but to the acquiring spouse's new fee simple interest. *id.* at 756. In our case, Parrish's separate property interest existed prior to the divorce. He acquired no new interest from the divorce decree.

The District Court in *Finch* explained how an equitable lien attaches to separate property that is created out of community property in a Texas divorce:

> "... the acquiring spouse's undivided one-half community interest is divested, and he or she is revested with fee simple ownership - that is, the trial court terminates the acquiring spouse's joint undivided interest and grants him or her sole and separate ownership." *In re Finch, supra.* at 756.

Thus, the *Finch* Court would have reached the opposite result in this case. Here, Parrish owned the subject land in fee simple as his separate property from the time of its inheritance. The parties were not divested of any community property interest in

the divorce decree, and Parrish was not revested with a new fee simple ownership.

II. McVay Asserted an Invalid Lien.

The Court of Appeals for the Fifth Circuit affirmed the judgments of the District Court and the Bankruptcy Court, which both held that this case is also controlled by *Heggen v. Pemelton*, 836 S.W.2d 145, 148 (Tex. 1992). (Appendices B 4, C 11,12) The Texas Supreme Court announced in *Heggen* the rules for imposition of an equitable lien against separate property homestead in a divorce decree. They include the rule that a lien against the other spouse's separate property homestead, regardless of how it is imposed, is not enforceable unless it fits into the categories allowed by the Texas Constitution. The Texas Supreme Court held that the court imposed equitable lien against the homestead in the *Heggen* case was invalid for this reason; that is, it was not a tax lien, a purchase money lien, or an improvement lien for which "work and material [had been] contracted for in writing, with the consent of both spouses." TEX. CONST. Art. 16 §50; *id* at 148.

Heggen states that a court imposed equitable lien on separate property homestead in Texas must fit into one of the categories allowed by the Texas Constitution:

> "[T]he homestead of a family or a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing im-

> provements thereon, and in this last case, only when the work and material are contracted for in writing, with the consent of both spouses...," TEX. CONST. Art. 16, §50 (1992).

The *Heggen* Court states that unless the Texas constitutional provisions are followed in imposing equitable liens, it could lead to foreclosure of the homestead, a result contrary to the protections plainly afforded homesteads by the Texas Constitution. *Heggen v. Pemelton*, 836 S.W.2d 145, 148 (Tex. 1992).

It is clear that the Petitioner in this case also did not have a valid lien against the homestead. There was no evidence or finding that Parrish pledged the property to McVay as security for purchase money, or that he executed a lien to her in return for work and materials used in constructing improvements, contracted in writing, with the consent of both spouses. (Appendix G)

McVay Misconstrues the Parties' Homestead Rights. McVay has claimed that the equitable lien imposed by the trial court in her divorce decree met both the purchase money and improvement lien categories of the constitutional test. However, Texas authorities do not agree with her. The lien imposed in the divorce decree was not a purchase money lien. The "debt" for purchase money, excepted from the operation of the homestead law, must arise out of the acquisition of some right, title, or interest in the disputed property. It cannot be one founded on a transaction occurring after title has vested and homestead occupancy has commenced. 43 Tex.Jur.3d 512, Homesteads §78. Title vested in Parrish when he inherited the

property from his mother in 1983. The divorce decree did not purport to impose an equitable lien until 1991.

McVay's equitable lien also did not meet the Texas constitutional exception for work and material used in constructing improvements, which are contracted in writing. There was no written contract between Parrish and McVay for her to supply work or materials. The Texas Constitution is very clear that a construction or improvement lien on a homestead is invalid unless created in the manner provided in §50 of article 16. It has long been the law of Texas that its Constitution must be strictly followed to obtain a lien against homestead property. *Collier v. Valley Building and Loan Association*, 62 S.W.2d 82, 84 (Tex. 1933); *Moray Corporation v. Griggs*, 713 S.W.2d 753 (Tex. App. - Houston [1st. Dist.] 1986, writ ref'd).

The District Court below found no merit in the Petitioner's argument that the equitable lien imposed in her divorce decree was sanctioned by the Texas Constitution:

> "... [McVay's] argument is totally misplaced. As pointed out in her own Brief, the mechanic's and materialmen's lien is intended to protect the integrity and validity of a contractor's lien on an owner's homestead, not the potential lien of a divorcing spouse. Therefore, the strictures enunciated in *Pemelton* were not intended to include this type of lien. The sole fact that community funds were used to build a house on the separate real property does not equate in any way to a home improvement lien." (Appendix B 8)

Thus, under the Texas Supreme Court's latest pronouncement of Texas law on this point, McVay did not have a valid or enforceable lien, even if it were not avoided under 11 U.S.C. §522(f)(1).

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CONCLUSION

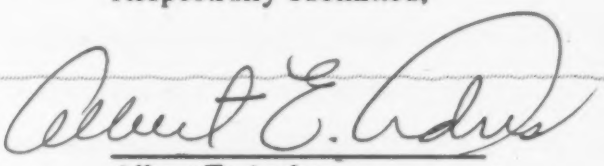
This Petition for Writ of Certiorari should be denied, because:

1. The Court of Appeal's decision does not conflict with *Farrey v. Sanderfoot.*

2. McVay did not have a valid lien against Parrish's homestead, because it did not comply with Article 16, §50 of the Texas Constitution.

3. McVay's judicial lien was properly voided by the bankruptcy judge, because it impaired Parrish's homestead exemption, and was therefore subject to avoidance under 11 U.S.C. §522(f)(1).

Respectfully submitted,



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Appendix G

Final Decree of Divorce of
Sharman Rae Parrish and Samuel R. Parrish

87th Judicial District Court
Freestone County, Texas

March 21, 1991

89-333-B

IN THE MATTER OF THE MARRIAGE OF SHARMAN RAE PARRISH AND SAMUEL R. PARRISH	* * * *	IN THE DISTRICT COURT OF FREE-STONE COUNTY, TEXAS, 87TH JUDICIAL DIST.

FINAL DECREE OF DIVORCE

On February 18, 1991, this case came on for hearing.

Petitioner, SHARMAN RAE PARRISH, Social Security Number 461-82-0524, appeared in person and through attorney of record, BARBARA MOE.

Respondent, SAMUEL R. PARRISH (JR.), Social Security Number 452-40-2817, appeared in person and through attorney of record, REED JACKSON and announced ready for trial.

The record testimony was duly reported by KEN TOMLIN.

The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and pre-requisites required by law. The Court, after receiving evidence, finds that it has jurisdiction over this cause of action and the parties and that at least 60 days have elapsed since the date the suit was filed. The Court finds Petitioner has been a domiciliary of this state for at least a six-month period preceding the filing of this action and a resident of the county in which this suit is filed for at least a 90-day period preceding the filing of this action. All persons entitled to citation were properly cited.

A jury was selected, and the following question of fact was submitted to the jury, and a verdict was returned and duly filed:

QUESTION NO. 1

What percentage, if any, of the $247,878.00 received by Samuel R. Parrish at the time of his early termination of employment from the Sun Company was retirement benefits?

You are instructed that an answer of any percentage must be based on clear and convincing evidence. If you do not find that clear and convincing evidence supports a finding of any percentage, then answer zero percent. "CLEAR AND CONVINCING EVIDENCE" means that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the proposition sought to be established.

Answer by stating the appropriate percentage, if any.

ANSWER: $ 0%

All other questions of fact and of law were submitted to the Court.

IT IS ORDERED AND DECREED that SHARMAN RAE PARRISH, Petitioner, is granted a divorce from SAMUEL R. PARRISH, Respondent, and that the marriage between them is dissolved on the grounds of cruel acts by Respondent.

The Court finds that there is no child of the marriage and that none is expected.

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party.

IT IS ORDERED AND DECREED that the estate of the parties is divided as follows:

Petitioner is awarded the following as Petitioner's sole and separate property, and Respondent is divested of all right, title, interest, and claim in and to such property:

1. All household furniture, furnishings, fixtures, goods, appliances, and equipment in the possession of or subject to the control of Petitioner.

2. The following furniture, furnishings, fixtures, goods, appliances and equipment in the possession of Respondent:

a. wooden cabinet in formal dining room;
b. brass trimmed cabinet in formal dining room;
c. blue chair in master bedroom;
d. rocker chair in master bedroom;
e. coffee table in master bedroom;
f. refrigerator in shop;
g. VCR;
h. two Stiffle lamps;
i. brass bed set;
j. wicker bookshelf;
k. electric lawnmower;
l. credenza from Sharman's aunt;
m. Ethan Allen furniture;
n. corner curio cabinet;
o. VHS tapes and case;
p. Sharman's grandfather's painting;

3. Any and all sums of cash in the possession of or subject to the sole control of Petitioner, including money on account in banks, savings institutions, and other financial insti-

tutions, which accounts stand in Petitioner's sole name or from which Petitioner has the sole right to withdraw funds or which are subject to Petitioner's sole control.

4. Moneys on account in the following banks, savings institutions, or other financial institutions:

a. Sun Credit Union savings account, account number 452-40-2817, ($474.00 or balance in account);

b. Merrill Lynch, CMA cash account, account number 586-58154; ($1,257.00 or balance);

5. All clothing, jewelry and other personal effects in the possession of or subject to the sole control of Petitioner.

6. A portion of retirement benefits pursuant to the following provisions:

This Decree of Divorce shall be a "qualified domestic relations order" under Section 414(p) of the Internal Revenue Code. In compliance with that provision, the Court ORDERS and specifies as follows:

a. This qualified domestic relations order assigns a portion of the benefits payable in the Oryx Energy Company Retirement Plan ("the Plan") at P.O. Box 2880, Dallas, Texas 75221, to Sharman Rae Parrish in recognition of the existence of her marital rights in Samuel R. Parrish's retirement benefits as defined by Texas law in Berry v. Berry 647 S.W. 2d 945 (Tex. 1983).

b. Participant in the Plan is Samuel R. Parrish, whose last known mailing address is P.O. Box 637, Wortham, Texas 76693, whose birth date is October 17, 1930, and whose Social Security Number is 452-40-2817.

c. Alternate Payee is Sharman Rae Parrish, whose last known mailing address is P.O. Box 843, Wortham, Texas 76693, whose birth date is September 17, 1947, and whose Social Security Number is 461-82-0524.

d. On the date of this divorce, Participant's present accrued benefit for retirement at normal retirement age under the Plan with a straight life annuity benefit is $2,175.00 per month.

e. As part of a just and right division of the estate of the parties, the Court awards, assigns, and grants to Alternate Payee 2.93% of Participant's present accrued benefit. Alternate Payee shall have the right to elect to receive benefit payments on or after the date on which Participant attains (or would have attained) the "earliest retirement age" as that term is defined by the Internal Revenue Code of 1986, Section 414(p)(4) (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement). Alternate Payee shall have the right to elect any form of benefits permitted by the Plan as of the date Alternate Payee elects to begin receiving benefits, other than a joint and survivor annuity. If the Plan pays cost-of-living increases at any date after Alternate Payee begins to receive benefits from the Plan, Alternate Payee shall also receive a share of each increase, which share shall be in the proportion that the accrued benefit awarded herein to Alternate Payee (including her share of previous cost-of-living increases hereunder) bears to the total accrued benefit (Alternate Payee's accrued benefit and Participant's accrued benefit) on the date the cost-of-living increase is granted.

f. If Participant elects to retire from the Plan before normal retirement age and by reason of that early retirement the Plan provides an early retirement subsidy, then Alternate Payee's benefit shall be recomputed to provide Alternate Payee with 2.93% of that portion of the subsidy attributable to the total accrued benefit on the date of divorce.

g. If Participant predeceases Alternate Payee, Alternate Payee shall be treated as the surviving spouse of Participant with regard to a share of the survivor benefits to be paid pursuant to the terms of the qualified joint and survivor's annuity provided under the terms of the Plan, calculated in accordance with the terms of this paragraph, and that share shall be paid to Alternate Payee beginning at Participant's death and continuing until Alternate Payee's death. Participant shall elect a form of benefits under the Plan that provides the qualified joint and survivor annuity as set forth under section 417 of the Internal Revenue Code of 1986, as amended. Alternate Payee's share of the survivor benefit shall be 2.93% of the total benefit paid pursuant to the terms of the qualified joint and survivor annuity under the Plan. This award to Alternate Payee shall not preclude the Plan from paying the balance of the survivor benefits payable pursuant to the terms of the qualified joint and survivor annuity under the Plan not awarded to Alternate Payee to Participant's spouse, if any, or other designated beneficiary permissible under the Plan at the time of Participant's death.

h. This qualified domestic relations order shall apply over the life of Alternate Payee. This qualified domestic relations order is not intended to require the Plan to provide any type or form of benefits or any option not otherwise provided

by the Plan, nor shall this order require the Plan to provide for increased benefits (determined on the basis of actuarial value). This qualified domestic relations order does not require the Plan to provide benefits to Alternate Payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

i. The benefits hereby assigned to Alternate Payee shall be paid to Alternate Payee notwithstanding Participant's anticipated continued employment with Oryx Energy Company.

j. All benefits payable under the Oryx Energy Company Retirement Plan other than those awarded herein to Sharman Rae Parrish are awarded to Samuel R. Parrish and shall be payable to him in such manner and form as Samuel R. Parrish may elect in his sole and undivided discretion, subject only to Plan requirements.

k. Sharman Rae Parrish is ORDERED AND DECREED to report any retirement payments received on any applicable income tax return. The pension trustee is authorized to issue a Form W2P on any direct payment made to Sharman Rae Parrish.

l. While it is anticipated that the Plan Administrator will pay directly to Sharman Rae Parrish the benefit awarded to her, Samuel R. Parrish is designated a constructive trustee to the extent he receives any retirement benefits under the Oryx Energy Company Retirement Plan that are due to Sharman Rae Parrish but paid to Samuel R. Parrish. Samuel R. Parrish is ORDERED AND DECREED to pay the benefit

defined above directly to Sharman Rae Parrish within three days after receipt by Samuel R. Parrish.

m. IT IS ORDERED AND DECREED that this Court shall retain jurisdiction of this cause for the purpose of making any clarifying orders that are necessary to proper enforcement of the orders and provisions contained herein and that may be necessary to ensure acceptance of this order as a "qualified domestic relations order" under section 414(p)(a)(A) of the Internal Revenue Code.

7. Any and all policies of life insurance insuring the life of Petitioner.

8. Any and all stocks, bonds, and securities registered in the name of Petitioner, together with all dividends, splits, and other rights and privileges in connection therewith.

9. The following stocks, bonds, and securities together with all the dividends, splits and other rights and privileges therewith:

a. Oryx Energy Company, 19 shares, Certificate Nos. E173120, E122038, C104855, and C135363;

b. Sun Company, Inc., 19 shares, Certificate Nos. C104855 and C135363;

c. San Antonio Partners, 1/2 unit;

d. Merrill Lynch Municipal Bond Fund, Account No. 012-5865-8154, 398.421 shares ($4,030.00 or balance);

e. Merrill Lynch Cash Management Account, Account No. 586-58154 consisting of the following stocks:

1) Wang Labs, Inc., CL B 200 shares;

2) Tandy Corporation, 100 shares;

3) Oryx Energy Company, 100 shares;

4) Sun Company, Inc., 100 shares;

5) Mary Kay Corporation, 1,600 shares.

($7,964.00 or balance)

10. The 1984 Cadillac, vehicle identification number 1G6AM4735E9083510, together with keys, and title documents.

11. For the purpose of the just and right division of the property made in this decree, it is FURTHER ORDERED AND DECREED that SHARMAN RAE PARRISH, Petitioner, recover of and from SAMUEL R. PARRISH, Respondent, judgment for $76,500.00, representing Petitioner's one-half (1/2) interest in community reimbursement for improvements made to Respondent's separate property and a judgment for $10,000.00 for attorney's fees herein awarded to Petitioner against Respondent; said total judgment of $86,500.00 to be paid together with judgment interest thereon at the rate of 8% per annum and payable in 144 monthly installments of $936.32 per month beginning on April 1, 1991, and a like payment due and payable on the 1st day of each month thereafter until the sum of $86,500.00 is paid in full, for which let execution issue. This judgment is part of the division of the community

property between the parties and shall not constitute or be interpreted to be any form of spousal support, alimony or child support.

For the purpose of securing the judgment awarded to Petitioner, SHARMAN RAE PARRISH, for $86,500.00, it is FURTHER ORDERED AND DECREED that Petitioner, SHARMAN RAE PARRISH, is granted an equitable lien against the following described real property:

1. Located in Freestone County, Texas, to-wit:
   BEING 23.15 acres out of the R.B. Longbotham League Survey in Freestone County, Texas..... [Full legal description is in the Petition for Writ of Certiorari]

SHARMAN RAE PARRISH, Petitioner, is granted judgment against SAMUEL R. PARRISH, Respondent, for $10,000.00 for attorney fees, which is a sum stipulated to be reasonable, as heretofore ordered.

Respondent is awarded the following as Respondent's sole and separate property, and Petitioner is hereby divested of all right, title, interest, and claim in and to such property:

1. The following real property is confirmed as the separate property of Respondent, SAMUEL R. PARRISH, subject to the equitable lien of Petitioner, SHARMAN RAE PARRISH:

   a. Located in Freestone County, Texas, to-wit:
      BEING 23.15 acres out of the R.B. Longbotham League Survey in Freestone County, Texas .....

b. 50% interest in and to a 64.36 acre tract out of the Colder Survey, Navarro County, Texas, as more particularly described in an instrument recorded in Volume 1025, page 253, of the Deed Records of Navarro County, Texas.

2. All household furniture, furnishings, fixtures, goods, appliances, and equipment in the possession of or subject to the control of Respondent, save and except those such items herein specifically awarded to Petitioner that are now in the possession of Respondent.

3. All clothing, jewelry, and other personal effects in the possession of or subject to the sole control of Respondent.

4. Moneys on account in the following banks, savings institutions or other financial institutions:

a. First National Bank of Wortham, checking account #1572-800-9 ($1,142.00);

b. First National Bank of Wortham, savings account #823-840-4 ($3,602.00).

5. 97.07% of any and all sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights reltaed (sic) to any profit-sharing plan, retirement plan, pension plan, employee stock option plan, employee savings plan, accrued unpaid bonuses, or other benefit program

existing by reason of Respondent's past, present, or future employment with Oryx Energy Company.

6. Any and all policies of life insurance insuring the life of Respondent.

7. The following stocks, bonds, and securities, together with all dividends, splits, and other rights and privileges in connection therewith:

a. Granada Foods, 60 shares;

b. Granada Bio-Sciences, 20 shares;

8. The 1989 Chevrolet Silverado pickup, vehicle identification number 1GCDC14K0K2219808, together with all prepaid insurance, keys, and title documents.

9. Livestock and farm equipment.

IT IS ORDERED AND DECREED that Petitioner shall pay, as a part of the division of the estate of the parties, the following debts and obligations and shall indemnify and hold Respondent and Respondent's property harmless from any failure to so discharge these debts and obligations:

1. Any and all debts, charges, liabilities, and other obligations incurred solely by Petitioner SHARMAN RAE PARRISH from and after October 5, 1989, unless express provision is made in this decree to the contrary.

IT IS ORDERED AND DECREED that Respondent shall pay, as a part of the division of the estate of the parties, the following debts and obligations and shall indemnify and hold Petitioner and Petitioner's property harmless from any failure to so discharge these debts and obligations:

1. Any and all debts, charges, liabilities, and other obligations incurred solely by Respondent SAMUEL R.

PARRISH from and after October 5, 1989, unless express provision is made in this decree to the contrary.

2. Judgment and equitable lien awarded herein to SHARMAN RAE PARRISH in the amount of $86,500.00, secured by an equitable lien against the separate property of Respondent SAMUEL R. PARRISH.

3. Any mortgage indebtedness against the real property herein confirmed as Respondent's separate property.

IT IS ORDERED AND DECREED that SAMUEL R. PARRISH shall appear in the law offices of Reed Jackson at Fairfield, Texas, on or before 10:00 A.M. on March 28, 1991, and shall execute and have acknowledged and delivered to SHARMAN RAE PARRISH the following instruments:

1. Certificate of title to 1984 Cadillac, motor vehicle identification number 1G6AM0-4735E9-083510;

2. Seller, Donor or Trader's Affidavit;

3. Stock transfer certificate for stock held by Merrill Lynch in Merrill Lynch Cash Management Account; and,

4. 19 shares of Oryx Energy Stock, 19 shares of Sun Company, Inc., Stock, and San Antonio Partners stock, in possession of Respondent with stock transfer certificates.

IT IS ORDERED AND DECREED that SAMUEL R. PARRISH shall deliver possession to SHARMAN RAE PARRISH at 10:00 A.M. on March 28, 1991 at SAMUEL R. PARRISH's residence in Wortham, Texas the following items of personal property:

a. wooden cabinet in formal dining room;

b. brass trimmed cabinet in formal dining room;

c. blue chair in master bedroom;

d. rocker chair in master bedroom;

e. coffee table in master bedroom;

f. refrigerator in shop;

g. VCR;

h. two Stiffle lamps;

i. brass bed set;

j. wicker bookshelf;

k. electric lawnmower;

l. credenza from Sharman's aunt;

m. Ethan Allen furniture;

n. corner curio cabinet;

o. VHS tapes and case;

p. Sharman's grandfather's painting;

IT IS ORDERED AND DECREED that Petitioner's name is changed to SHARMAN RAE McVAY.

Costs of Court are to be borne by the party by whom such costs were incurred.

IT IS FURTHER ORDERED AND DECREED that the temporary injunction imposed by the Temporary Orders of this Court shall survive this judgment and independent enforcement may be sought.

IT IS FURTHER ORDERED AND DECREED that SAMUEL R. PARRISH shall pay to SHARMAN RAE PARRISH $250.00 per month for temporary support pending any appeal taken in this case with the first such payment being

due and payable on the date that is 31 days after the date of entry of this Decree of Divorce and a like payment being due and payable on the same day of each and every month thereafter until 30 days following the entry of a final judgment of the Court of Appeals or, if a writ of error is granted by the Supreme Court of Texas, the entry of a final judgment of the Supreme Court of Texas.

Without affecting the finality of this Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

IT IS ORDERED AND DECREED that all relief requested in this cause and not expressly granted is denied.

This divorce judicially PRONOUNCED AND RENDERED in open court at Fairfield, Freestone County, Texas, on February 21, 1991, and further noted on the Court's docket sheet on the same date, but ministerially signed and ratified on the 21st day of March, 1991.

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JUDGE PRESIDING